

(2018) 08 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No..1358 Of 2018

Rifat Basheer @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 03-08-2018

Acts Referred:

Jammu and Kashmir Reservation Act, 2004 — Section 10, 23
Jammu and Kashmir Persons with Disabilities Act, 1998 — Section 22
Jammu and Kashmir Reservation Rules, 2005 — Rule 15, 17

Citation : (2018) 08 J&K CK 0013

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.

No.,"Application

no.,"Roll no.,Name,"NEET

Rank",Score,Category,"State

Rank

135,40469714,504507793,Saiqa Khan,26741,487,JKPM,135

187,40607617,504406697,"Vaishali

Bhadwal",31929,475,JKPM,187

387,40609989,504409050,"Mansi Charak

(respondent

no.5)",49918,440,JKPM,389

417,40443711,504400210,"Mehak

Mahajan",52724,436,JKPM,419

478,40680551,504504577,"Rifat Basheer

(Petitioner)",57402,428,JKPM,481

(i) Writ of mandamus, commanding respondents 3&4 to declare selection of respondent no.5 under Open Merit Category instead of JKPM Category",,,,,,

on the same analogy as has been done by official respondents vis-À-vis first two candidates of JKPM Category, namely, Saiqa Khan and Vaishali",,,,,,

Bhadwal, on the basis of their superior merit and rank than that of last candidate selected for MBBS course in Open Merit category;" ,,,,,,

(ii) Writ of mandamus, commanding official respondents to fill up resultant vacancy, which shall be caused after declaring selection of respondent no.5" ,,,,,,

under Open Merit Category, from amongst JKPM Reserved Category Candidate, who is next in order of merit and ranking in the said category, i.e." ,,,,,,

petitioner; ,,,,,,

(iii) Writ of certiorari, quashing explanation attached to Rule 17 of Jammu and Kashmir Reservation Rules 2005, issued vide SRO 49 on 30.01.2018, as" ,,,,,,

the same being totally illegal, arbitrary and ultra vires to the J&K Reservation Act, and the Constitutional guarantees of petitioner; Â" ,,,,,,

OR in alternative ,,,,,,

Writ of mandamus, declaring that the explanation to Rule 17 of J&K Reservation Rules 2005, is not applicable to Undergraduate Medical Courses," ,,,,,,

and cannot be interpreted against the import of the Rule to which it is an explanation, i.e. Rule 17." ,,,,,,

(iv) Writ of mandamus, commanding respondents to treat only two seats out of three shortfall seats for Female candidates for MBBS Course in" ,,,,,,

Government Medical College, Jammu, as shortfall and third seat be declared to have fallen vacant under JKPM Category." ,,,,,,

7. Reply has been filed by respondents 3&4, in which they insist that under J&K Board of Professional Entrance Examination (BOPEE) created" ,,,,,,

under Act no.XXV of 2002, the Board is mandated to conduct examination for various professional courses including counselling. However, after" ,,,,,,

amendment in the Medical Council of India Act, a common eligibility test is conducted at National level and counselling for allotment of seats is done" ,,,,,,

by the State Counselling Authorities. Respondents maintain that admission to Medical / Professional Courses is time bound and has to be completed in ,,,,,,

accordance with MCI Schedule, notified for the purpose, which schedule has seal

and stamp of the Supreme Court in Ashish Ranjan case and",,,,,,

reiterated on various occasions by the Supreme Court. Respondent insist that for admission 2018, the first round of counselling had to be completed by",,,,,,

5th July 2018. Second round of counselling is to be conducted between 15th and 26th July 2018, with the last date of joining as 3rd August 2018.",,,,,,

Respondent Board has accordingly after making adjustments notified the Schedule for second round of counselling from 25th to 27th July 2018, so that",,,,,,

process completed in a time bound manner. Respondent board fill up any seat after cut-off date in view of explicit direction of the Supreme Court.Â",,,,,,

8. It is also averred by respondents 3&4 in their Reply that the Government amended Rule 17 (SRO 294) in terms of SRO 49 of 2018 dated 30th",,,,,,

January 2018, which became a subject matter of litigation in NEET PG admission. Since Notification/SRO 49 of 2018 was issued, after NEET PG",,,,,,

process was initiated, this Court in a case titled Akash Kumar and others and Pooja Sharma and others v. State and others, held that admission to P.G.",,,,,,

Course for 2018 be made on the basis of unamended Rule 17. The Division Bench of this Court in the appeals filed by BOPEE and others, while",,,,,,

upholding the views of learned Single Bench, also upheld validity of amended Rule and also observed that unamended Rule operated harshly against",,,,,,

OM Candidates. The NEET PG process was, accordingly, initiated on 2nd February 2018, after issuance of Notification/SRO 49 by the Government",,,,,,

and therefore, the SRO 49 holds the ground in admission to NEET UG Courses 2018 as well.Â",,,,,,

9. Respondents 3&4 also maintain their Reply that CBSE conducted NEET examination on 6th May 2018 and result was declared on 4th June 2018.",,,,,,

In order to fill up the seats in Government / Private Medical Colleges, respondent Board notified State Merit List of candidates vide notification",,,,,,

no.057BOPEE of 2018 dated 23rd June 2018 and candidates were asked to fill-in online preference vide notification no.058-BOPEE of 2018 dated",,,,,,

23rd June 2018. Based on merit-cum-preference and after due application of reservation rules, respondent Board notified list of selected candidates",,,,,,

vide notification no.62BOPEE of 2018 dated 6th July 2018. Respondent Board is said to have also given candidates two daysâ?? time i.e. upto 8th",,,,,,

July 2018, to make representations, if any, if they chose to do so. The representation received within stipulated time were disposed of by

respondent",,,,,,

BOPEE by notification no.63-BOPEE of 2018 dated 8th July 2018. The candidates allotted seats have also taken admission in the college, except who",,,,,,

did not join, upto last date notified by respondent Board viz. 17th July 2018.Â",,,,,,

10. According to respondents 3&4, on 20th July 2018, respondent Board received a representation from one Bashir Ahmad Lone father of Rifat",,,,,,

Bashir, Rank no.428, representing that Rule 17 has not been applied properly in respect of MBBS Females (JKPM Category) as the JKPM category",,,,,,

candidate under score 440 and rank 389 has been allotted seat in JKPM category instead of OM. It is insisted that applicant also represented through",,,,,,

another representation dated 20th July 2018 to consider his Ward against one of unfilled OM seats due to non-joining by upgrading the candidate under",,,,,,

Rank 389 to OM category. The grievance of petitioner is that one Miss Mansi Charak, bearing Rank 389 with the score of 440, was allotted a seat in",,,,,,

Reserved Category-JKPM, though she should have been allotted seat in OM category as she fell within OM score. In such a case JKPM seat could",,,,,,

have been allotted to petitioner under Reserved Category. Besides, it has been represented to allot one of the seats available due to non-joining, to",,,,,,

petitioner under JKPM category by upgrading Miss Mansi Charak (Rank 389). It is maintained that instant writ petition has been filed on similar",,,,,,

grounds. The allotment of seats, as averred by respondents 3&4, to professional courses/ colleges has to be made on the basis of merit-cum-",,,,,,

preference of the candidates with due application of Reservation Rules including Rule 17 of Reservation Rules as amended vide SRO 49 of 2018",,,,,,

dated 20th January 2018.Â",,,,,,

11. Respondents 3&4 also insist that as per unamended rules, there was a swapping of seats allotted to a reserved category candidate in OM with his",,,,,,

category seat in case he/she did not get a seat/discipline/stream/college of his/her choice in OM, e.g. an RBA candidate in OM, if getting his 2nd",,,,,,

preference of college for allotment, would be considered against a category seat and allotted a college of his choice, viz. preference if available in",,,,,,

reserved category. The resultant seat/college left by RBA OM candidate was to be shifted to concerned category viz. RBA, for allotment of seat to",,,,,,

the category candidates in RBA as per merit-cum-preference. Pursuant to

amended Rule 17, there is no swapping of seats but the seat left by",,,,,,

category candidate in OM, consequent upon allotment of a category seat to him is to be allotted to next OM candidate. The "left over",,,,,,

disciplines/streams/colleges in OM after allotment of seat to last OM candidate as allocable under rules are to be allotted to such category candidates,",,,,,

whose seats were taken by OM category candidates, e.g. under amended rule if an RBA candidate in OM is getting his 2nd preference of college in",,,,,,

OM, he will be allotted a seat of his choice from reserved category on the basis of her merit-cum-preference. The seat left by him in OM, will be",,,,,,

allotted to next OM candidate. This process will continue till Rule 17 is applied. Towards the end some seats over and above allocated seats in OM,",,,,,

will remain vacant, which have to be shifted to such categories where a shortfall has occurred due to application of Rule 17. This is clear also by",,,,,,

explanation added to amended Rule 17, notwithstanding that the last part of explanation relates to admission to PG courses but it does not alter the",,,,,,

explanation to the "left over" disciplines /streams/colleges as mentioned in amended rule and that reading of the rule without explanation also,,,,,,

conveys the same meaning. It is also contended that Rule 17 has been applied in 17 cases during NEET UG admission 2018, including in three cases",,,,,,

under Female quota (two in CDP and one in OSC). However, while applying the rule, a peculiar situation was faced by the Board.Â",,,,,,

12. Respondents 3&4 also aver that there were 100 seats for Females in OM category and 100 seats for Reserved Female Candidates with 1%,,,,,,

Reservation for JKPM category (02 seats). Two JKPM candidates figuring at State Rank 135 and 187 found place in OM category as they were,,,,,,

allotted seats on the basis of their merit-cum-preference as if they were OM candidates for all practical purposes. It was a simple allotment as OM,,,,,,

candidate with no benefit of reservation/application of Rule 17. Rule 17 was applied in three cases in Females, two in CDP and one in OSC. The seats",,,,,,

left by those candidates, were allotted to next OM candidates in accordance with amended Rule 17 SRO 49 of 2018.Â However, at serial no.100, in",,,,,,

OM there was a JKPM category candidate, namely, Miss Mansi Charak, Rank 389, with score 440. Rule 17 could not be applied to her as in case it",,,,,,

was applied, she would leave a seat that had to be allotted to an OM candidate in terms of amended Rule 17 read with Explanation thereto as "left",,,,,,

over disciplinesâ? are to be worked out only after allotment of seat to last OM candidate as allocable under rules. The capacity under OM under such,,,,,,,,

a situation would have gone to 101 thereby violating the basic reservation rules (Rule 13). However, JKPM candidate falling in OM could not be",,,,,,,,

denied consideration against category seat under such circumstances, to protect her merit and preference.Â",,,,,,,,

Here, respondents 3&4 have given best elucidation and example vis-Ã -vis subject matter of the instant case. As said by them that in case Miss",,,,,,,,

Mansi Charak had been treated as an OM candidate (100th candidate) and allotted a seat on the basis of availability of seat in OM, it would have",,,,,,,,

deprived her of her preference of seat/ college. As per the records, if she had been allotted a seat in OM, she could have got 3rd preference viz.",,,,,,,,

SKIMS, as choice of her college, but being a meritorious category candidate should have got the first preference, viz. JMC, Jammu. Respondent",,,,,,,,

Board, it is next stated, accorded consideration to her case in OM, first in terms of Section 10 of Reservation Act, 2004, but to avoid any disadvantage",,,,,,,,

to her, shifted her to category to protect her merit and preference and therefore, she got the seat of her choice on the basis of her meritcum-",,,,,,,,

preference in relevant category. Thus, for all practical purposes, she was allotted a category seat after due consideration by treating her allotment",,,,,,,,

category as a reserved category as Rule 17 was not applicable in her case and she could not be denied consideration in reserved category to claim a,,,,,,,,

seat of her choice as it could have caused discrimination/ hardship to the candidate. The seat left by said candidate in OM was, accordingly, allotted to",,,,,,,,

next OM candidate and the seats in OM were filled up by maintaining the capacity of 100. The left over three seats in OM as a consequence of,,,,,,,,

application of Rule 17, were allotted to category candidates as per Rule 17 in respective categories.Â",,,,,,,,

13. Respondents 3&4 vehemently claim and maintain that present petitioner, though belonging to JKPM with a score 428 Rank 481, was allotted a",,,,,,,,

seat in OM in Dental Course on the basis of her merit-cum-preference as she did not fall within cut off merit for allotment of seat for MBBS either in,,,,,,,,

OM or under reserved category. Respondent Board has appropriately protected merit of OM Reserved Category Candidate Rank 389, by protecting",,,,,,,,

her preference also. A category candidate, like petitioner, with a lower merit,

cannot claim a seat, which does not belong to her as per Rules. The",,,,,,
meritorious reserved category candidate had no grievance as her merit and preference have been protected. She had first right of consideration on the,,,,,,
basis of her superior merit.Â It is also stated that the request of father of petitioner to consider his Ward/petitioner against one of unfilled seats as,,,,,,
also projected in writ petition, could not be considered as three seats for females had fallen vacant under OM category due to nonjoining of candidates",,,,,,
in this category. These seats were to be allotted to OM Female Candidate only.,,,,,,

Question of upgrading Miss Mansi Charak, Rank 387, does not arise as she has got a seat of her choice as first preference. Besides she has not",,,,,,
participated in second round of counselling held on 25th July 2018, and which also indicates that she is satisfied with her allotment. Respondent Board",,,,,,
cannot make any alteration in first merit list by taking seats into consideration, which were not available during first round, more so when all unfilled",,,,,,
seats in Government Medical Colleges have been filled up during counselling held on 25th July 2018. Rule 17 is not applicable in 2nd round of,,,,,,
counselling as already notified in Information Brochure nor can it be applied retrospectively for first round of counselling.,,,,,,

14. Respondents 3&4 also claim that in respect of two candidates at Rank 135 and 187, there was no application of Rule 17 as the candidates found",,,,,,
place in OM and were considered for allotment of seat on the basis of their merit and preference in OM category. Miss Mansi Charak, Rank 389,",,,,,
was considered in OM category in accordance with the provisions of Reservation Act but she was not getting a seat of her choice in OM and as such,,,,,,
was shifted against category reserved for JKPM to protect her preference. Besides, Rule 17 could not be applied in her case as it would have",,,,,,
stretched quota under OM to 101 instead of 100, which is not permissible under rules. Respondent Board has discharged its duties by protecting merit",,,,,,
and preference of respondent candidate, who had a superior merit over petitioner. Petitioner had a right to consideration, which has been duly",,,,,,
accorded to her and allotted the seat in dental course as per her merit and preference. Petitioner's claim that respondent candidate, namely, Miss",,,,,,
Mansi Charak, may be upgraded during second round of counselling, so that the seat left by her is given to petitioner, is not tenable as the process",,,,,,

cannot be rolled back by hypothetically treating the seats available during first round, which seats actually become available due to non-joining of",,,,,,

candidates. Miss Mansi Charak is not aggrieved of allotment of seat to her by protecting her merit and preference. Further seats in second round have,,,,,

to be filled up in accordance with procedure and not according to what petitioner has projected.Â After receiving shortfall from colleges, respondent",,,,,,

Board notified second round of counselling schedule for 25th, 26th and 27th July 2018, as in accordance with MCI Regulations, admissions to Medical",,,,,,

Colleges are to be made in a time bound manner, which schedule has also seal and stamp of the Supreme Court. After expiry of time, lines fixed by",,,,,,

MCI, no admissions can be made except with prior permission of the Supreme Court. Thus, the shortfall received from the colleges, has also been",,,,,,

notified while notifying the schedule for second round of counselling.Â,,,,,

15. Respondents also aver that in pursuance of notification nno.70BOPEE of 2018 dated 17th July 2018, respondent Board conducted first phase of",,,,,,

second round of counselling on 25th July 2018, during which all unfilled seats in Government Medical/Dental Colleges and in ASCOMS have been",,,,,,

filled up due to upgradation of eligible candidates on the basis of merit cum preferences and subsequent allotment of seats. The last available MBBS,,,,,

Female seat has now been allotted to a candidate with Rank 413 and score 437 in SKIMS. The filling up of three unfilled seats reported by GMC,",,,,,

Jammu, have affected large number of candidates by way of upgradation/ allotment on 25th July 2018. Allotment/upgradations made on 25th July 2018",,,,,,

have been notified vide notification no.76-BOPEE of 2018 dated 25th July 2018. Petitioner also participated in upgradation round on her turn, she",,,,,,

retained the seat allotted to her earlier, as no seat in MBBS was available on her turn.",,,,,

16. I have heard learned counsel for parties and considered the matter.,,,,,,

17. Learned counsel for petitioner states that it is established principle of law and upheld by various courts as well including the Apex Court, that the",,,,,,

candidates belonging to reserved categories, who secure meritorious rank and better position than last candidate selected in OM category, require to",,,,,,

be considered for selection under OM category instead of reserved category. However, choice of college shall remain on the basis of counselling as",,,,,,

per her reserved status and resultant vacancy shall have to be filled from among the reserved candidates of the same category.Â He states that,,,,,,,,

respondent no.5 has acquired superior merit and rank then the last candidate selected in OM, as such, respondent no.5 require to be declared to have",,,,,,,,

been selected under OM category instead of JKPM and resultant vacancy/seat of JKPM deserves to be shown as a shortfall seat and require to be,,,,,,,,

filled from amongst the candidates of JKPM category, who is next in merit in the said category, i.e. petitioner. Learned counsel also states that",,,,,,,,

specific percentage is fixed for reservation in respect of a particular category and the said seats/percentage is to be filled amongst said reservation,,,,,,,,

candidates and at the same time, reservation category candidates are not barred at any point of time to compete with OM category candidates and if it",,,,,,,,

is found that reserved candidates obtain merit superior than that of last candidate selected in OM category, under such circumstances respondents",,,,,,,,

3&4 are under an obligation to select meritorious reserved category candidates under OM and fill resultant vacancy from amongst reserved category,,,,,,,,

candidate. Anything contrary to that, amounts to violation of Reservation Rules and Policy. Non-selection of respondent no.5 under OM category has",,,,,,,,

infringed fundamental rights of petitioner because petitioner is next in merit in the category of JKPM candidates. In support of his submissions, learned",,,,,,,,

counsel for petitioner has placed reliance on Ritesh R. Sah v. Dr. Y.L. Yamul & ors 1996 3 SCC 253; Shahid Anjum v. State of U.P. and others 2016,,,,,,,,

Supreme (All) 1460; and Samta Aandolan Samiti & another v. Union of India & others (2014) 14 SCC 745.,,,,,,,,,

18.Learned counsels for respondents insist and rightly so that Miss Mansi Charak had her choice and preference, which could not have been meddled",,,,,,,,

or intruded for comforting and adjusting petitioner. In the event Miss Mansi Charak had been allotted seat in OM, as is being exhorted by petitioner in",,,,,,,,

instant writ petition, she could have got third preference, viz. SKIMS and such allotment of seat in OM would have jeopardised and violated the rights",,,,,,,,

of said Miss Mansi Charak as her choice and preference was GMC, Jammu, and not SKIMS. Respondent Board could not have, to the disadvantage",,,,,,,,

of Miss Mansi Charak, shifted her to OM seat. They also state that respondent Board has discharged its duties by protecting merit and preference of",,,,,,,,

respondent candidate, who had a superior merit over petitioner. Petitioner had a right to consideration, which has been duly accorded to her and",,,,,,,,

allotted the seat in dental course as per her merit and preference. Petitioner's claim that respondent candidate, namely, Miss Mansi Charak, may",,,,,,

be upgraded during second round of counselling, so that the seat left by her is given to petitioner, is not tenable as the process cannot be rolled back by",,,,,,

hypothetically treating the seats available during first round, which seats actually become available due to non-joining of candidates. Miss Mansi",,,,,,

Charak is not aggrieved of allotment of seat to her by protecting her merit and preference. Learned counsels also submit that respondent Board has",,,,,,

followed all the rules on the subject while allocating the seats to the candidates and the merit and preference has been protected and respondent",,,,,,

Board has not debarred any candidate from competing in the OM, which is amply clear that Rank 135 and 187 have been allotted seat in OM as their",,,,,,

merit and preference both matched with OM candidates. The respondent Board has also applied Rule 17 in three cases in Female category, viz. 02 to",,,,,,

CDP and 01 OSC, apart from applying Rule 17 in 16 cases in respect of male OM candidates.Â",,,,,,

19. Notice issued to respondent no.5 (Miss Mansi Charak), according to petitioner, has been served on her and in this regard service-affidavit as well",,,,,,

has been submitted by petitioner. Besides this, a Xerox copy, portraying communication of information and intimation as regards pendency of writ",,,,,,

petition against respondent no.5 via cell phone no.8492022871, has been placed on record. Learned counsel for respondents has also produced a",,,,,,

Xerox copy of email generated on 24th July 2018 at 6.50 PM, which depicts that respondent no.5 (Miss Mansi Charak) had been intimated with",,,,,,

respect to disposal of representation of petitioner, to which she has replied that she is well satisfied with her MBBS seat in GMC Jammu and that she",,,,,,

has not participated in second counselling and upgradation process.Â",,,,,,

20. Chairman, J&K BOPEE, also remained present in person on 1st August 2018, when the matter was finally heard and reserved for orders. He has",,,,,,

submitted that respondent Board has strictly followed the rules and regulations governing and regulating the subject-matter of selection in",,,,,,

question.Â Â",,,,,,

21. Respondent Board, in view of merit-cum-preference and after due application of Reservation Rules, while notifying the list of selected candidates",,,,,,

vide notification no.62-BOPEE of 2018 dated 6th July 2018, had also given the candidates an opportunity of two days to make a representation, if any,",,,,,,

if they chose to do so within two days, i.e. up to 8th July 2018. The representations received within stipulated date were disposed of by respondent",,,,,,

Board vide notification no.63-BOPEE of 2018 dated 7th July 2018. Interested candidates took admission in colleges up to the last date notified by,,,,,,

respondent Board, viz. 17th July 2018. Respondent Board on 20th July 2018, received a representation from father of petitioner, representing that Rule",,,,,,

17 of SRO 294 of 2005 has not been applied properly in respect of MBBS Females (JKPM Category) as JKPM Category under score 440 and rank,,,,,,

389 has been allotted seat in JKPM Category. While making representation petitioner had relied upon unamended Rule 17 as provided in SRO 294,",,,,,,

which is no longer applicable. What unamended Rule 17 says, is worth to be reproduced hereunder:",,,,,,

â??17. Allotment of Discipline etc.,,,,,,,

A reserved category candidate if selected against the open merit seat, may be considered for allotment of discipline/stream/ college allocable to him in",,,,,,

his respective category on the basis of his merit and preference. The resultant discipline/stream/college in the Open Merit category shall be allotted to,,,,,,

the reserved category candidates who gets selected consequent upon the reserved category candidate getting selected in the Open Merit category.â??,,,,,,

22. As per above unamended Rule 17, there had been swapping of seats allotted to a Reserved Category candidate in OM, with his category seat in",,,,,,

case a candidate did not get a seat/ discipline/stream/college of his/her choice. For instance, an RBA candidate in OM, if getting his 2nd preference of",,,,,,

college for allotment, would be considered against a category seat and allotted a college of his choice and preference if available in Reserved",,,,,,

Category. The seat/college left by RBA OM Category candidate was to be shifted to concerned category, viz. RBA, for allotment of seats to the",,,,,,

category candidates in RBA category as per merit-cum-preference. However, Rule 17 of SRO 294 of 2005 has been amended vide SRO 49 of 2008",,,,,,

dated 30th January 2018, which envisages:",,,,,,

â??17. Allotment of Discipline etc.,,,,,,,

A reserved category candidate if selected against the open merit seat may be

considered for allotment of discipline/stream/ college allocable to him in,,,,,,
his respective category on the basis of his merit and preference. The left over
discipline/stream/college in the open merit category shall be allotted to,,,,,,
the reserved category candidates who get selected consequent upon the
reserved category candidate getting selected in the open merit category.,,,,,,

Explanation:,,,,,,

The left over discipline shall mean such member of discipline/stream/college
becoming available after allotment of seat to the last open merit candidate,,,,,,
as allocable under rules. Such seats shall be added to the pool of reserved
category candidates in terms of Rule-15 and allotted on the basis of merit,,,,,,
cum preference.â??,,,,,,

23. Amended Rule 17, on its plain reading, provides and envisages that there
shall be no swapping of seats. The seat left by category candidate in",,,,,,

OM, consequent upon allotment of a category seat to him, is to be allotted to
next OM candidate. â??Left overâ? seats in OM, after allotment of seat",,,,,,

to OM candidate as allocable under Rules are to be allotted to such category
candidates, whose seats were taken by OM category candidates. For",,,,,,

instance, if an RBA candidate in OM is getting his 2nd preference of college in OM
and not of his/her choice and preference, in such circumstances",,,,,,

the candidate will be allotted a seat of his choice but from reserved category on
the basis of his merit-cum-preference. The seat left by him in OM,,,,,,

will, however, be allotted to next OM candidate. This process will continue till
Rule 17 is applied. At the end, some seats in OM will remain vacant,",,,,,

which have to be shifted to such categories where a shortfall has occurred due to
application of Rule 17.Â The same is also clear by the Explanation,,,,,,

added to Amended Rule 17. It has been rightly stated by respondents that
unamended Rule 17 provided for swapping of seats, viz. resultant seats,",,,,,

whereas Amended Rule envisages and stipulates left over seats. The expression
â??resultantâ? has been substituted by â??left overâ? in terms,,,,,,

Amended Rule 17. Generally, â??left overâ? connotes residual. Respondent no.5
is satisfied qua her allotment in GMC, Jammu and did not, therefore,",,,,,

participate in second round of counselling because she had already got first
preference seat during first round of counselling. Even she conveyed her,,,,,,

satisfaction to this effect. In such circumstances, respondent Board was left with
no option except protecting merit and preference of higher merit",,,,,,

candidate and the consequences percolating therefrom will be applicable to the next in merit/subsequent candidates. Respondents also maintain that,,,,,,,,

Rule 17 is not applicable in second round of counselling, including subsequent rounds thereafter. In addition to this, no seat, available in second round,",,,,,,,,

can be treated as part of first round.Â In that view of matter, petitioner has no right to exhort what she has beseeched for in writ petition on hand.Â",,,,,,,,,

24. The Government, in exercise of powers conferred by Section 23 of J&K Reservation Act, 2004, Section 22 of J&K Persons with Disabilities Act,",,,,,,,,

1998, and all relevant provisions of the law in this behalf, made the J&K Reservation Rules, 2005.Â The Rules made by the Government and even",,,,,,,,,

the Acts enacted by the Legislature, as is seen very often, are being altered, modified and amended or even substituted by new enactments, given the",,,,,,,,,

changing scenario and having regard to prevailing needs and requirements consequent upon having the expert opinion thereabout. In that view of,,,,,,,,

matter, it is not the domain of the Courts to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular",,,,,,,,,

public policy or law is wise or a better public policy or enactment can be evolved. Such exercise must be left to the discretion of the executive and,,,,,,,,

legislative authorities as the case may be.Â,,,,,,,,

25. It may not be out of place to mention here that our Constitution, though federal in its structure, is modelled on the British Parliamentary system",,,,,,,,,

where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the,,,,,,,,

condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function,,,,,,,,

comprises both of the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the",,,,,,,,,

maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the",,,,,,,,,

general administration of the State.,,,,,,,,,

26. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the,,,,,,,,

policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse",,,,,,,,,

dixit of the executive functionaries thereby offending Article 14 of the

Constitution or such policy offends other constitutional provisions or comes into,,,,,,

conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive function of" ,,,,,,

the State. The Supreme Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive" ,,,,,,

authority of the State. The supremacy of each of the three organs of the State, i.e. legislature, executive and judiciary in their respective fields of" ,,,,,,

operation needs to be emphasized.Â ,,,,,,

27. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not,,,,,,

be any occasion to entertain misgivings about the role of the judiciary in outstepping its limit by unwarranted judicial activism being very often talked of,,,,,,

in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate,,,,,,

the need for mutual respect and supremacy in their respective fields. [See: Premium Granites v. State of T.N. 1994 (2) SCC 691; M.P. Oil Extraction,,,,,,

v. State of M.P. 1997 (7) SCC 592; Ugar Sugar Works Ltd v. Delhi Administration and others (2001) 3 SCC 635; Bhavesh D. Parish and others v.,,,,,,,

Union of India and another (2000) 5 SCC 471; Netai Bag and others v. State of West Bengal and others (2000) 8 SCC 262; P.T.R. Exports (Madras),,,,,,,

Pvt. Ltd v. Union of India and others 1996 (5) SCC 268]. Judgements, cited by learned counsel for petitioner, in view of above discourse, are" ,,,,,,

distinguishable from the facts and circumstances of present case and therefore, do not render any aid and assistance to the case of petitioner." ,,,,,,

28. The Supreme Court has even held that the power to frame a policy by executive or legislative decision included the power to withdraw the same.,,,,,,

Right of the State to change its policy from time to time under the changing circumstances cannot be questioned, though the changed policy deviated" ,,,,,,

from the judicial pronouncements of the Supreme Court; it has been so said by the Supreme Court in State of Punjab v. Ram Lubhaya Bagga (1998) 4 ,,,,,,

SCC 117. Having said that, it is within the domain of the State to either amend, alter or modify any provision of any Statute, including J&K" ,,,,,,

Reservation Rules, that the State deems fit and proper." ,,,,,,

29. For all what has been stated and discussed above, writ petition on hand is devoid of any merit and is accordingly dismissed, with connected MP(s)." ,,,,,,,
Interim direction, if any, shall stand vacated." ,,,,,,,